

MINUTES



REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD Council Chambers Thursday, January 8, 2004, 7:30 P.M. 777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Zermeno, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Bogue, McKillop, Sacks, Fraas, Halliday, Thnay
CHAIRPERSON Zermeno
Absent: COMMISSIONER None

Staff Members Present: Anderly, Camire, Conneely, Emura, Looney, Patenaude, Payne

General Public Present: Approximately 21

PUBLIC COMMENT

AGENDA

1. Requested Vacation of a Portion of Baumberg Court (formerly Arden Road, County Road #2636), Westerly of Baumberg Avenue – Sherman Balch (Applicant)
2. Use Permit No. PL-2003-0638 – Eddy Reyes (Applicant) / Everett Eslinger (Owner) – Request to Operate a Tattoo Parlor – The Property is Located at 27655 Mission Boulevard
3. Variance No. PL-2003-0462 – Marlene Milani (Applicant) / Julio and Rubi Magana (Owners) – Request for a Variance to Allow a Garage with a 14-Foot Front Setback Where 20 Feet is Required and 3'-6" and 5'-0" Side Yards Where 6'-8" is Required. – The Project is Located at 24025 Second Street
4. Conditional Use Permit Application No. PL-2002-0098 / Variance No. PL-2002-0099 – Robert Lavassani (Applicant/Owner) – Request to Construct a Restaurant With a Bar and Operate a Night Club and to Allow a Reduction in the Front Setback From 20 Feet to 14 Feet – Request for a Parking Exception to Waive the 15 Percent Tractor/Trailer Parking Requirement and To Reduce the Parking Requirement From 72 Spaces to 67 – The Property is Located at 1705 West Winton Avenue

PUBLIC HEARINGS

1. Requested Vacation of a Portion of Baumberg Court (formerly Arden Road, County Road #2636), Westerly of Baumberg Avenue – Sherman Balch (Applicant)

DRAFT

Survey Engineer Payne explained the history of the road, indicating that approval from the Planning Commission would then go to the City Council. He said the vacation would benefit the City in various ways and existing utility easements will be reserved.

The public hearing was opened at 7:35 p.m.

Sherman Balch spoke regarding the vacation saying he had previously applied for the vacation of the whole of Baumberg Court, but this would have meant other access being provided for several property owners on the street. He noted that as soon as they can satisfy the City's requirements, they would apply for a complete vacation. He explained that at present the street is a dumping ground and they have appealed to the City to clean up the property. He showed photos of the site and its problems. He noted they want to develop the adjacent land. He asked for approval of the application.

Commissioner Halliday asked about abandoning the entire street and access for the landowners.

Mr. Balch explained the access and easement.

Sheila Junge supported the vacation of street since it has become an eyesore.

The public hearing closed at 7:45 p.m.

Commissioner Bogue moved, seconded by Commissioner Thnay, to support the staff recommendation for the vacation. He added that something more should be done with the rest of the street as well. The problems will continue until the street is all private.

2. Use Permit No. PL-2003-0638 – Eddy Reyes (Applicant) / Everett Eslinger (Owner) – Request to Operate a Tattoo Parlor – The Property is Located at 27655 Mission Boulevard

Associate Planner Camire indicated that this is a relocation of an existing business from West Tennyson. Mr. Reyes is moving to the new location, built in 1964, as one of three tenants. She noted that the staff of the Veterinary Clinic, which share a common driveway, have several concerns about the relocation, mainly parking and loitering. There are 11 parking stalls, which meets the City requirements. The clientele cannot be under 18-years of age. Health code requirements must be met. Staff feels this is a compatible use with the area and neighborhood. Staff recommends the non-conforming sign on the parcel be removed. Staff also recommends approval of the permit.

Commissioner Halliday asked about the plan and the "secret sidewalk".

Associate Planner Camire said the "Secret Sidewalk" was the name of the business itself.

Commissioner McKillop asked about complaints from other tenants at the present location.

Chairperson Zermeño asked whether this is the second or third tattoo parlor in the City of Hayward and whether there had been police calls at the present location.



Associate Planner Camire said this is the third location in the City and there had been no disturbance calls reported.

The public hearing opened at 7:55 p.m.

Eddy Reyes, the applicant, said he has not had a problem with neighbors. He is a family man and requested approval.

Chairperson Zermeno asked about walk-ins vs. appointments.

Mr. Reyes said he usually works by appointment. Clients might come in to see the artwork and to make an appointment.

Commissioner Halliday asked whether clients come in with other people and whether there was any loitering or other problems at his current shop.

Mr. Reyes explained that he gets most of his clients by referrals; some of his clients travel from as far away as Los Angeles. He said he does not allow loitering in the area around his shop. He keeps the place clean and requires valid identification to enter the shop.

Chairperson Zermeno said he was in the shop on West Tennyson, and it was impressive.

Commissioner Thnay asked how Mr. Reyes charges and is it by the hour.

Mr. Reyes explained that he does have an hourly rate so the client can determine how many hours they want the work to take. He said he charges \$80 an hour.

Chairperson Zermeno asked about the reason for the relocation.

Mr. Reyes said the present location does not allow for enough parking and he wanted a cleaner space.

Mia Sanchez said the shop was recommend to her by friends. She saw his work and was impressed. It is a homey place and Mr. Reyes is professional. He sterilizes everything. She noted that he did all of her tattoos.

Christine Bowman, representing the Alta Vista Veterinary Clinic at this location, said she originally wanted to complain about the tattoo shop. Their issue is the limited parking for the location. However, after speaking to Mr. Reyes she agreed that the move would be okay with them. She said that Mr. Reyes and the Veterinary Clinic share the goal to improve the neighborhood. She said she was comfortable with the shop moving in and would agree to the approval of the application.

Miguel Sanchez said in his spare time he is an artist, so he appreciates the artwork. He noted that this is simply a different canvas. Over the years the doors have opened on a different point of view of tattoo. Mr. Reyes shop is very customer oriented and artistic. They went together to one of the tattoo conventions. He said he would support the relocation because the environment is better and Mr. Reyes plans to take this art to a higher level.

The public hearing closed at 8:05 p.m.

Commissioner Sacks thanked Mr. Reyes. She said it was important that there were no negative instances reported about the present shop. She added that she was impressed. Mr. Reyes move should be a very positive addition for the street. She then moved, seconded by Commissioner Halliday, to approved the staff recommendation.

Commissioner Halliday commented that she also appreciated the comments about it being art and said she understood different people having different points of view.

The motion passed 6:1, with Commissioner Bogue voting "No."

3. Variance No. PL-2003-0462 – Marlene Milani (Applicant) / Julio and Rubi Magana (Owners) – Request for a Variance to Allow a Garage with a 14-Foot Front Setback Where 20 Feet is Required and 3'-6" and 5'-0" Side Yards Where 6'-8" is Required. – The Project is Located at 24025 Second Street

Associate Planner Emura described the property and the irregularity of the shape of it. The applicant is proposing to increase the size of the house by more than 50 percent so a 2-car garage is required. However, he would need a variance for the garage setback and side yard. He described the proposal. Staff recommended denial of the application for variance. He noted that one complaint was received when the original design was submitted with a roof-top deck.

Commissioner Sacks asked about the drawing, which shows an adjacent house. The garage was approximately a foot from the side property line.

Associate Planner Emura noted that there are two garages next door. He checked to see whether there were other variances in the area and found none so the garage along the property line was probably a legal nonconforming structure.

Planning Manager Anderly said staff was looking specifically for variances in the area rather than buildings with or without permits.

Chairperson Zermeno asked about the apartment complex.

Associate Planner Emura said the couple across the street, who were concerned, didn't follow up.

The public hearing opened at 8:17 p.m.

Julio Magana, the applicant, spoke in favor of permission for the variance. He introduced his



family and said they need the extra room, adding that he could not afford to buy a bigger home. He said he had compliments from neighbors for keeping up the house and yard. He explained he was really discouraged to try doing anything else.

Commissioner Halliday asked about the car parked where the garage addition would be.

Mr. Magana explained that some neighbors park in their driveways.

Chairperson Zermeno asked about the open space on the second floor and whether his neighbors approved of the plans.

Mr. Magana said it was part of the design. He said his 92-year old neighbor has no problem with the remodel since it makes the neighborhood better.

Vincent Milani speaking for the design firm said the house lot creates special circumstances.

Marlene Milani, project designer, explained that the expansion was designed with the notion of the irregularity of the shape of the lot. She argued that the neighbors enjoy the privilege of their garages already which are setback less than 20 feet. Irregularity of the lot itself does not lend itself to conformity with the requirements. She pointed out the number of non-compliant garages within the neighborhood.

The public hearing was closed at 8:29 p.m.

Commissioner Thnay asked staff about the requirement for the 2-car garage and whether they had talked with the applicant about bringing the size down below 50 percent.

Associate Planner Emura explained that the extra bedroom also triggers a 2-car garage.

Commissioner Sacks asked about the safety concerns and whether it would make a difference if there is either a 1- or 2-car garage.

Associate Planner Emura said he assumed the concerns would be similar since any car parked on the drive would intrude into the public right-of-way.

Chairperson Zermeno asked whether it is an assumption that they would park outside of the garage and not inside the garage.

Associate Planner Emura said it is assumed they would either park on the street or in the driveway. Already there is a lot of traffic on that street with the possibility that they might park on the street if the car does not fit on the driveway.

Commissioner Halliday stressed that although no variance has been approved for the

neighborhood, it is clear the other homes were built with the 14-foot setback. The reason they need the variance is that this garage is already there. Because so many in the neighborhood already have this situation, it would not constitute a special privilege. It would be consistent with what the area has.

Planning Manager Anderly explained that the present ordinance provides for a 2-car garage. There might be grounds for findings, but the additional parking has a typical requirement for a 20-foot setback for safety reasons. This is only 14-feet from the property line.

Commissioner Halliday stated that they already have the 14-foot garage setback. Although they may be trying to create too big of a house for the area, she said she was inclined to allow the variance. She stressed that it is a problem applying new rules to existing neighborhoods. The City of Hayward will suffer if the administration takes the position of no expansion. She noted that this would not be granting special privileges. They have done the best that they can. She moved, seconded by Commissioner Thnay, to direct staff to come back with findings for approval.

Commissioner McKillop said she had to struggle with this issue but would be supportive of requesting that staff come back with findings for approval.

Assistant City Attorney Conneely said the Commissioners must weigh the evidence to justify the granting of the variances. They might also direct applicant to work with staff.

Commissioner Thnay said he agreed with Commissioner Halliday. As the architect showed, 14-ft setback is common to the area. An extension on the garage should take a car away from parking in the street. He added that he would like to see more architectural interest in the plans themselves. For this variance there are special circumstances, including the shape of the lot. He said he thought a new garage would help.

Commissioner Sacks said she would vote against the motion. In looking at the 19 properties which are noted to have a shorter drive-way, she was focusing on those homes which could need 2-car garages as well as the rest of the homes on the street, were they to all expand their properties. It does not make good sense. We have to say no at some point and encourage other modes of transportation.

Commissioner Halliday asked whether it would be possible to create a condition that nothing will intrude on the sidewalk.

Planning Manager Anderly said that there should be no need to do that since parking over the public access and right-of-way is already against the law.

Chairperson Zermeno encouraged the members to vote in favor of this motion. He emphasized that the additional space is a need for the family and not a luxury. This will help keep the family together and residents in the City of Hayward. He said it is fair to assume they would park inside the garage. Again he emphasized that he supported the motion and encouraged others to do the same.



Commissioner McKillop said she would support the motion since, after looking at all the lots, this one is the most irregular.

Commissioner Bogue added that he had toured the rear yard of this property and it is the most unusual piece of property in that area. With the apartment complex is next door, he wondered whose privacy is being affected. He said he would support the motion. He also asked whether it would come back for final approval.

Assistant City Attorney Conneely explained that, because of the wording of the motion directing staff to bring back findings for approval, it would be rescheduled.

The motion passed 6:1, with Commissioner Sacks voting "No."

4. Conditional Use Permit Application No. PL-2002-0098 / Variance No. PL-2002-0099 – Robert Lavassani (Applicant/Owner) – Request to Construct a Restaurant With a Bar and Operate a Night Club and to Allow a Reduction in the Front Setback From 20 Feet to 14 Feet – Request for a Parking Exception to Waive the 15 Percent Tractor/Trailer Parking Requirement and To Reduce the Parking Requirement From 72 Spaces to 67 – The Property is Located at 1705 West Winton Avenue

Associate Planner Emura made the staff report describing the properties in the area adding that staff does not support the variances but does support the use permit for the bar and nightclub and banquet facilities. He showed a sketch designed by staff placing the restaurant in the corner of the property adding that no variances would be needed were they to go with this sort of design. He noted two phone calls opposing the restaurant and bar earlier. With this last notification they received four letters from neighbors opposing the bar and the nightclub. Commpre has also come out in opposition. He added that a member of the Hayward Police Department was available for questions.

Chairperson Zermeño asked about staff's objection to the tower.

Associate Planner Emura explained that the tower is out of proportion to the rest of the building. He suggested it flare out more, and maybe be wider. The dominant feature should be the entryway.

Commissioner Sacks asked whether the same architecture would be used to locate the building in the corner of the lot.

Associate Planner Emura explained that it is logical to push it toward that corner so it would accomodate more cars.

Planning Manager Anderly explained that it would have no affect on the design, just the square footage.

Chairperson Zermeño asked about a letter objecting to the location of a restaurant in this area.

Associate Planner Emura said although it is zoned industrial, that could include a full service restaurant which would be a nice feature in the area. Staff supports it, feeling that there is a need for more in the area.

Commissioner Fraas asked about the variances and what they are approving.

Associate Planner Emura indicated that the Commission would have to approve everything in order for this to go forward.

The public hearing opened at 9:05 p.m.

Jay Yinger, architect for the project, explained that they have been talking and making plans for this project for the past 3 years. He suggested that the location should not be in the corner. This had been under discussion earlier. Although West Winton is extremely busy, they feel the restaurant should be back against the warehouse to soften the view. This is not the cookie-cutter project. He described his background as having worked on hundreds of restaurants and has learned that this is not an exact science. He said they believe that by giving up a piece of their property to the City to widen the road, they should not be required to add the extra five parking spaces needed for the size of the restaurant.

Commissioner Thnay asked about the two variances. He suggested reducing the size of the restaurant to 4,800 square feet. He also asked about the restroom sizes. He also suggested that for the other variance, which only amounts to 20 feet, there seems to be room to work with staff to check this out.

Commissioner Halliday asked staff to address the need for the property to widen the road

Planning Manager Anderly explained that each street in the City is subject to precise plan line, the ultimate street width that is established for each street by the Municipal Code. In the Industrial District they are a certain width, to accommodate trucks, etc. In this case, the ultimate width of Cloud Way is such that the property that is abutting it as it is developed and as it contributes vehicles to that street is required to dedicate land to do that. It is not unusual at all to do that. The law allows for housing, for example, to calculate the number of homes built on a property, based on the acreage before it is dedicated. However, the setback requirement has to meet the situation after it is dedicated.

Mr. Yinger then submitted a petition signed by 75 neighbors and people who are supporting the project.

Patricia O'Day, representing West Winton Investments, said she just found out about this project last week. She indicated that they have more questions than concerns, as in what kind of nightclub will it be. If there were a lot of rowdy people, it would be a concern. Most of the properties in this industrial area close at night. On their property is an auto repair place. The project will also add more congestion to West Winton.



David Kota, the Commpre (Community Prevention of Alcohol Related Problems) representative, said they support the recommendation of staff to deny the application. There are families in the area who already tolerate the industrial noise during the day; patrons of this restaurant/bar will prolong the noise into the nights and weekends. He said they also do not support the variance for parking. This is not an environment to support this type of business. It will require patrons to drive to the location. There is a lack of other commercial uses with little public transportation so this would increase the risk of driving while intoxicated. He asked about the type of license the applicant is seeking. Without this information, it is impossible to know whether it is an asset to the City of Hayward. He maintained that there is no justification to ask for a variance.

Gerald Reilly and Alycia Roberts said the plans look good. The restaurant would be amazingly compatible to the area. They expressed concern with the alcohol and the nightclub. With that much alcohol, there is a combination of their children patrons and drunk drivers. She wanted to see a menu and the type of clientele. This area is not patrolled. You can try to control but things do happen. They expressed concern about the type of clientele and whether the hours would be compatible.

Helen Safoari said she thinks it is a wonderful idea. She has lived in that area for two years. She expressed support for the project. It will be a beneficial project for the area.

The pubic hearing was closed at 9:36 p.m.

Chairperson Zermeno expressed concern that previously the Commission has had details on the hours and menus, etc.

Associate Planner Emura explained that the applicant was proposing serving American and Mediterranean food. It would be open Monday through Friday 11 a.m. until midnight, with weekends devoted to special events and banquets.

Planning Manager Anderly said that normally they would have more information but since staff is recommending against the variance. If the Commission were supporting the variance, they would bring back further details with conditions of approval. The Police Department would also have to present security information.

Chairperson Zermeno asked about the timing of the notice with holidays.

Planning Manager Anderly mentioned that this application has been around a long time. She noted that it would be continued if they support the plan.

Commissioner Bogue expressed similar concerns about the nightclub concept. It depends how it is operated. He noted that the area is underserved by restaurant. He said he is impressed someone is proposing to build something so large out there. It is an appropriate use in the area although he

was not in favor of reducing the landscaping setback. He said he was not interested in the variance or setback. He would be willing to allow the exception for waiving the tractor/trailer condition and the parking for tractor/trailer does not usually work. He then moved, seconded by Commissioner Sacks, to have it all come back with the conditional use permit for the nightclub and bar so the Commission can review the conditions for use permit. Not to allow front setback and not reduce the parking requirement. He said he was interested in conditions and security requirements and hours.

Commissioner Fraas said the design and idea are great. She agreed that the setbacks should be maintained, so she would defer to staff for the parking and setback and support the motion.

Commissioner McKillop asked whether they need special circumstances to reduce the number of parking requirement.

Planning Manager Anderly noted that they could find hardship for parking, if there is a building on the property for example.

Commissioner McKillop said it was a great project and will be a positive addition to the community. She said she would support the motion.

Commissioner Sacks discussed a seminar she attended in Redwood City on new job centers, work place districts. Looking at commercial, industrial centers, and proposing a lot more uses within those areas. She said she was very concerned about the definitions which will come back to the Commission. They would pay very close attention to all of the comments.

Commissioner Thnay thanked the owner and applicant. He said he thinks it is close if they will work with staff.

Commissioner Halliday said she appreciated the information from Commpre and Operation Paintball, and the use as a nightclub. This will be operating when everything else is closed. She said she would support the motion but believes it could be designed with requirements met.

Chairperson Zermeño said he does support the concept of a restaurant in this area, although he agreed they need more details and modification.

The motion passed 7:0.

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters

Planning Manager Anderly said there was no report but informed members of Bea Thornton's passing. She noted that services would be held February 14th. She added that there would be one further meeting this month.

4. Commissioners' Announcements, Referrals

Commissioner Sacks discussed further the forum in Redwood City and how very much she enjoyed the City calling it a was "delightful experience," even in the rain. The seminar was on

MINUTES



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Council Chambers

Thursday, January 8, 2004, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

"Workplace Districts in the 21st Century", noting how it relates to what the Commission is looking at.

Commissioner Zermeno commented on the ground breaking on property near his house for a small retail/commercial center. He added that the vacation of Baumberg would be a good thing. He also noted how rewarding it felt to help the Magana family upgrade their property. He said it felt good to help this family out.

APPROVAL OF MINUTES

- November 20, 2003 - approved
- December 11, 2003 - approved

ADJOURNMENT

The meeting was adjourned by Chairperson Zermeno in memory of Bea Thornton at 9:56 p.m.

APPROVED:

Christopher Thnay, Secretary
Planning Commission

ATTEST:

Edith Looney
Commission Secretary